

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

MAR 11 2003

PATRICK FISHER
Clerk

CURTIS LEE COOLEY,

Petitioner - Appellant,

v.

PABLO HERNANDEZ, Wyoming
State Hospital Superintendent, and
LARAMIE COUNTY DISTRICT
ATTORNEY'S OFFICE,

Respondents - Appellees.

No. 02-8091
(D.C. No. 02-CV-18-D)
(D. Wyoming)

ORDER AND JUDGMENT*

Before **TACHA**, Chief Circuit Judge, **McKAY**, Circuit Judge, and **BRORBY**,
Senior Circuit Judge.

After examining the briefs and the appellate record, this panel has
determined unanimously that oral argument would not materially assist the
determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G).
The case is therefore ordered submitted without oral argument.

*This order and judgment is not binding precedent, except under the
doctrines of law of the case, res judicata, and collateral estoppel. The court
generally disfavors the citation of orders and judgments; nevertheless, an order
and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

This is a *pro se* 28 U.S.C. § 2254 prisoner appeal. Mr. Cooley was charged with attempt to cause bodily injury to a peace officer. He was found not guilty by reason of mental illness and placed on supervision. Subsequently, he was found to have violated the terms and conditions of his supervision and was ordered confined at the Wyoming State Hospital.

In his § 2254 petition, Mr. Cooley sought release from the State Hospital. The district court dismissed the petition, without prejudice, for failure to exhaust administrative state remedies. Mr. Cooley then applied to this court for a certificate of appealability.

In order for this court to grant a certificate of appealability, Petitioner must make “a substantial showing of the denial of a constitutional right.” 28 U.S.C. § 2253(c)(2). To do so, Petitioner must demonstrate “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were adequate to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473, 484 (2000) (quotations omitted).

We have carefully reviewed Mr. Cooley’s brief, the district court’s disposition, and the record on appeal. Nothing in the facts, the record on appeal, or Petitioner’s brief raises an issue which meets our standards for the grant of a certificate of appealability. We agree with the district court that Mr. Cooley has

failed to exhaust his state court remedies pursuant to Wyoming Statute § 7-11-306. Therefore, for substantially the same reasons as set forth by the district court in its Order of August 29, 2002, we cannot say “that reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner.” Id.

We DENY Petitioner’s request for a certificate of appealability and DISMISS the appeal. Appellant’s motion to proceed *in forma pauperis* on appeal is GRANTED.

Entered for the Court

Monroe G. McKay
Circuit Judge